



THE COMMITTEE TO PRESERVE THE UPPER WEST SIDE

**Testimony of LANDMARK WEST!  
Certificate of Appropriateness Committee  
Before the CB7 Preservation Committee  
165 West 86<sup>th</sup> Street  
May 5, 2022**

## Regarding the Hardship Application of West Park Presbyterian Church

Landmark West! urges the CB7 Preservation Committee to reject the hardship request to de-designate the individually-landmarked West Park Presbyterian Church (WPPC). Denying the applicant's proposal will make it clear that demolition by neglect will not be permitted in this City.

### **What's at stake:**

This application presents both local and city-wide issues. Rewarding an owner who engages in demolition by neglect will set a precedent that will be used by owners and developers across the City to destroy the City's historic fabric; that is precisely the kind of result the Landmarks Preservation Commission (LPC) was established to stop. One court has described this process as follows:

As the law is currently structured, "demolition by neglect" is a recurring problem. This is the landmark law's equivalent of "Nero fiddling while Rome burns" and occurs when a landowner, who is more interested in the "land" rather than the "landmark," does little or no maintenance on a landmarked property and relies on either "mother nature" or vandalism or a "fortunate fire" to continue to cause the building to deteriorate in the hope that the building will fall into such disrepair that it will either "self-destruct" or have to be demolished. Either scenario would then free the owner to develop the property in a more profitable manner. *City of New York v. Seguire Bay Estates LLC* 54 Misc.3d 1204(A), N.Y.Sup., Dec. 29, 2016 54 Misc.3d 1204(A); penalties upheld in 56 Misc.3d 1081, 56 N.Y.S.3d 796, 2017 N.Y. Slip Op. 27161.

The CB7 Preservation Committee must recognize that this is not just a discussion of one building but rather a discussion that has citywide implications for landmarks, historic districts, and neighbors and raises the question that seems to permeate many if not all discussions of land-use policy.

**DO DEVELOPERS GET TO DESTROY OUR CITY WHILE BOTH APPOINTED AND ELECTED OFFICIALS WALK AWAY?**

You have an opportunity and an obligation to make it clear that the owner and the LPC must fulfill their obligations under the law.

### **What has brought us here:**

West Park Presbyterian Church was designated as an individual landmark on January 12, 2010. In its Designation Report the LPC found, in part, that “the West Park Presbyterian Church is one of the Upper West Side’s most important buildings.”<sup>1</sup> The City Council confirmed that designation on May 12, 2010.<sup>2</sup>

The designation of a historic landmark is no small task. It takes hours of work by the LPC and proponents of the designation; it is not a decision to take lightly or to reverse on a whim. A review of the designation report issued by the LPC shows that WPPC has both the historical and architectural elements necessary to support a designation as an individual landmark and to remain so.

When a property is designated as an individual landmark, specific legal obligations arise both for the owner of the property and the members and staff of the LPC. These obligations are neither mysterious nor hidden. They are established by Chapter 3 – OF TITLE 25 OF THE NYC ADMINISTRATIVE CODE (NYCAC) - LANDMARKS PRESERVATION AND HISTORIC DISTRICTS §§ 25-301 et sec.

#### § 25–311. Maintenance and repair of improvements.

a. Every person in charge of an improvement on a landmark site or in an historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay, or become damaged or otherwise to fall into a state of disrepair.

b. Every person in charge of an improvement containing an interior landmark shall keep in good repair (1) all portions of such interior landmark and (2) all other portions of the improvement which, if not so maintained, may cause or tend to cause the interior landmark contained in such improvement to deteriorate, decay, or become damaged or otherwise fall into a state of disrepair.

c. Every person in charge of a scenic landmark shall keep in good repair all portions thereof.

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<sup>1</sup> <http://s-media.nyc.gov/agencies/lpc/lp/2338.pdf>

<sup>2</sup> Resolution affirming the designation by the LPC of the WPPC, located at 165 West 86th Street a.k.a. 165-167 West 86th Street and 541 Amsterdam Avenue (Tax Map Block 1217, Lot 1), Borough of Manhattan, Designation List No. 425, LP-2338 (L.U. No. 60; 20105349 HKM; N 100224 HKM).

Of equal importance, the LPC is tasked with the preservation, protection, and maintenance of designated properties. This is its legislative mandate.<sup>3</sup> The LPC, pursuant to Title 25 of NYCAC, is charged with the duty to promote and preserve the general welfare of the City ... enhance the City's educational and cultural interests and to promote and strengthen its economy, commerce, and industry through and by means of the preservation, protection, and maintenance of buildings, structures, places, districts, and areas of historic or esthetic value or interest, significant in the history, growth, and development of the City, State or the United States.

In *City of New York v. 10-12 Cooper Square, Inc.*, 7 Misc. 3d 253, 255 (2004), the Court notes that there is a long-established presumption of regularity in that it is presumed that no official or person acting under an oath of office will do anything contrary to his official duty or omit anything which his official duty requires. (Citations omitted) It is this presumption that underlies the deference given to city agencies like the LPC when their decisions are challenged. Unfortunately, the LPC has not, in this matter complied with its obligations since WPPC was designated. This is not an isolated incident, particularly when owners and their developer partners can exert significant pressure on the agency to turn a blind eye.

The LPC has the power to cause an inspection of the property to ascertain the condition thereof and to take such action as it deems fit, including bringing litigation to force the owner to bring both the exterior and interior into good repair. The entire panoply of steps the LPC can take and has taken to stop demolition by neglect are discussed at length in an article by John M. Weiss<sup>4</sup> entitled PROTECTING LANDMARKS FROM DEMOLITION BY NEGLIGENCE: NEW YORK CITY'S EXPERIENCE.<sup>5</sup>

Sadly since the day WPPC was designated, the LPC has done little if anything to encourage or force the owner to take steps to fulfill its obligations. Now, because of the disturbing failure of the LPC to do its duty and the flagrant refusal of the owner to fulfill its obligations, you, the CB7 Preservation Committee, are being presented not with a request to support the owner in efforts to bring this individual landmark into good repair but rather a proposal to let the owner bury its failure in a pile of rubble.

The congregation has and has had access to a well-oiled machine, Bricks and Mortals, that advertises itself as follows:

A. "We Help You to Restore and Revive Your Sacred Real Estate." <sup>6</sup>  
OR

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<sup>3</sup> In enacting the legislation that established the LPC the City Council declared: It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. §25-301b.

<sup>4</sup> Mr. Weiss is a graduate of Columbia Law School, and has been deputy counsel of the Landmarks Preservation Commission from 2001 to the present.

<sup>5</sup> [https://www.nypap.org/wp-content/uploads/2017/02/WLR\\_complete\\_Vol\\_18\\_2.pdf](https://www.nypap.org/wp-content/uploads/2017/02/WLR_complete_Vol_18_2.pdf)

<sup>6</sup> <https://www.s4program.org/>

B. “ We connect congregations to experts and financial resources.

Bricks and Mortals is a grassroots membership organization comprised of individuals and organizations from faith-based institutions and the development sector that provides resources, connections and trainings in order to empower congregations in NYC to maximize and **monetize** their real property to support mission, benefit the community and continue their good work.”<sup>7</sup>

Roger Leaf, who appears as an elder of The First Presbyterian Church in the City of New York, is the Chair of Budget and Finance for Bricks and Mortals in support of this attempt to de-designate.<sup>8</sup> With all this expertise at its disposal, the owner hasn’t taken any substantial steps to maintain the building over which it has had complete control.

The NYC Planning Commission at the time of WPPC’s designation offered the following: “The landmark site is located in an R10A zoning district, and most of the site also lies within a C1-5 commercial overlay district. With a maximum allowable floor area ratio (FAR) of 10.0, the zoning lot could be developed with approximately 101,570 square feet of floor area. West Park Presbyterian Church contains approximately 16,000 square feet of floor area. Therefore, there are approximately 85,567 square feet theoretically available for transfer.”<sup>9</sup> The owner has taken no steps to take advantage of this possible avenue of support. Instead, it seeks to de-designate this important landmark, demolish, sell it and turn over the bulk of the sales price to a third party as a grant. The developer slated to purchase the property if the Church is demolished is Alchemy-ABR Investments Partners. Alchemy has already acquired 125 West 57th Street on Midtown’s Development Row from Calvary Baptist Church. This purchase and subsequent development is being touted as being one of the most important case studies in economic development in New York, among others.<sup>10</sup>

A vote for hardship is a vote for demolition. The Community has proven there is still life for this building. There are many options between outright neglect of a community asset and more luxury apartments. To date, WPPC has not made any attempts to maintain the building or to seek funds to do so; rather, it has decided to allow it to deteriorate in the hopes that the LPC will simply walk away from it. That’s not hardship; it’s a dereliction of duty.

Do not allow WPPC to do this. Do not help set a precedent that will doom many of our beloved landmarks to mere dust. Instead, reaffirm that the community has rights and landmarks have meaning and that both owners and the LPC have obligations to protect the landmarks under their control. Reject this application.

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<sup>7</sup> <https://www.bricksandmortals.org/about/mission>

<sup>8</sup> <https://www.bricksandmortals.org/about/mission>

<sup>9</sup> <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/100224.pdf>

<sup>10</sup> <https://www.bricksandmortals.org/bricks-and-mortals-case-studies/economic-development>